IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 279 OF 2003

Shri Dhirendra Samanta ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

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Mrs. Vimala K. Gupta, counsel for Petitioner

Mr. A.H. Palekar, A.G.P. for Respondent No.1.

Mr. A.J. Bhor, counsel for Respondent No.2

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CORAM: B. H. MARLAPALLE, J.

DATED: 15TH FEBRUARY, 2005

P. C.:-

1. Heard Mrs. Gupta, the learned counsel for the petitioner.

2. It is alleged that the Ward Officer of the Municipal Corporation of Greater Bombay has seized the articles of Gold Smiths inspite of the restraining order passed by the City Civil Court at Mumbai in L.C. Suit Nos. 111 of 2002 to 116 of 2002 and thus actions of seizure were between 6.6.2003 to 10.6.2003. Admittedly, the present petitioner is the plaintiff in L.C. Suit No. 113 of 2002. The learned counsel further states that the plaintiffs who were also aggrieved by the action of seizure and

had obtained injunction orders against the said seizure, have approached the Court below under Order XXXIX Rule 2-A of the Civil Procedure Code praying for action of contempt against the defendants. In fact the same course of relief was available to the present petitioner as well. The learned counsel for the petitioner has referred to the following two decisions and submitted that even if such a remedy is available to the present petitioner, the Court's suo moto power of taking cognizance for contempt of a subordinate court's order, can be invoked.

1. S.K. Sarkar, member Board of Revenue, U.P.Lucknow Vs. Vinay Chandra Misra (1981) 1 SCC 436.

2. K.S. Villasa Vs. M/s. Ladies Corner and Anr. AIR 1999 SC 2140.

. In the case of S.K. Sarkar (supra) it has been clarified that the High Court has discretion to take suo moto cognizance and if an alternative remedy is available to the party or in case the contempt is frivolous, it would be proper to relegate the petitioner to the alternative remedy. In the present case number of Gold Smiths had received notices and

subsequently the valuable items like ornaments etc. came to be seized by the Officers of the Municipal Corporation. These notices have been challenged in the Civil Suits pending before the City Civil Court at Mumbai and in these Suits, Notices of Motion filed for temporary injunction, have been allowed. The contentions raised in this petition are that inspite of such an injunction and the notices having been challenged in the Suits, the Officers of the Municipal Corporation have resorted to an action of seizure and therefore, the order passed by the Court below has been violated. These allegations are already under scrutiny by the Courts below as some Gold Smiths who are the Plaintiffs have already filed applications Under Order XXXIX Rule 2-A of C.P.C.. Under such circumstances, it would be appropriate that the petitioner is also relegated to the same remedy.

3. Hence, the Contempt petition is rejected with liberty to approach the court below under Order XXXIX Rule 2-A of C.P.C..

4. Certified copy is expedited.